

be consistent with a “no-action” letter received by the association from the U.S. Securities and Exchange Commission (“SEC”), stating that the SEC will not recommend enforcement action if association employees receive the planned referral fee but do not register with a broker-dealer and the association does not register as a broker-dealer;

(3) Solicitation of a person to execute a transaction in a specific security by any registered representative;

(4) Indemnification by the service corporation to a degree greater than the indemnification provided to it by the third-party broker-dealer; and the association is prohibited from indemnifying a third party broker-dealer;

(5) Extension of margin credit by the association to customers of the service corporation or broker-dealer;

(6) Non-registered representatives who are dual or sole employees of the association performing tasks other than clerical for ministerial tasks; prohibited activities include accepting or delivering money or securities and taking orders to execute securities transactions.

(c) Any association that intends to acquire or establish a service corporation to engage in preapproved securities brokerage activities shall furnish to the OTS at least 30 days prior to the commencement of operations, written notice containing a full description of the brokerage services to be provided and a certification from the board of directors of such association that such services will be in compliance with all of the requirements of this section. In addition, the association shall retain complete records of all executed contractual agreements and memoranda between the service corporation and broker-dealers, investment advisors, the parent savings association, and their affiliates, pro forma income statements for a three year period, any required professional opinions, and a reasoned legal opinion from counsel that the securities brokerage services qualify as preapproved under this section.

(d) The Regional Director may request additional information at any time regarding the operations of the service corporation if there are super-

visory concerns about the activity, has evidence that the activity may not be in the best interest of the association or service corporation, or has questions as to whether the activities are being conducted in a manner that is preapproved.

[54 FR 49492, Nov. 30, 1989, as amended at 55 FR 13511, Apr. 11, 1990; 57 FR 14340, Apr. 20, 1992; 57 FR 33437, July 29, 1992; 57 FR 48949, Oct. 29, 1992; 57 FR 62474, Dec. 31, 1992; 59 FR 53570, Oct. 25, 1994; 60 FR 66717, Dec. 26, 1995; 61 FR 66570, Dec. 18, 1996]

§ 545.91 Home office.

All operations of a Federal savings association shall be subject to direction from the home office.

§ 545.92 Branch offices.

(a) *General.* A branch office of a Federal savings association is any office other than its home office, agency office, administrative office, data processing office, or an electronic means or facility under part 555 of this chapter.

(b) *Eligibility.* Federal savings associations eligible for expedited treatment under § 516.5 of this chapter may establish a branch office subject to the procedures in paragraph (f) of this section. A Federal savings association subject to standard treatment under § 516.5 of this chapter must not establish a branch office without prior approval subject to the procedures in paragraph (e) of this section.

(c) *Application form; filing; completion; supervisory objection.* Applicants shall obtain application and notice forms and related instructions from the OTS.

(d) *Processing of applications/notices.* Processing of applications and notices shall be subject to the following procedures:

(1) *Publication.* (i) A federal savings association must publish a public notice of the branch application or notice in accordance with the procedures specified in subpart B of part 516 of this chapter.

(ii) Promptly after publication of the public notice, the savings association shall transmit copies of the public notice and publisher’s affidavit of publication to the OTS.

(iii) The application or notice and all related communications may be inspected by any person at the Regional

Office of Thrift Supervision, Treasury

§ 545.93

Office during regular business hours, unless such information is exempt from public disclosure.

(2) *Submission of application or notice.* A Federal savings association must comply with § 545.93 of this part and must file its application or notice within the time frame in § 516.60 of this chapter.

(3) *Submission of comments.* Commenters may submit comments on the application or notice in accordance with the procedures specified in subpart C of part 516 of this chapter.

(4) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

(e) *Approval of branch application.* (1) The OTS shall approve an application only if the overall policies, condition, and operation of the applicant afford no basis for supervisory objection and the proposed branch will open within twelve months of approval unless otherwise allowed by the OTS. In considering whether to approve an application, the OTS will assess and take into account an association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, pursuant to part 563e of this chapter; assessment of an association's record of performance may be the basis for denying an application.

(2) An application shall be deemed to be approved 30 days after notification that the application is complete, unless the OTS suspends the applicable processing time frames under § 516.190 of this chapter, or the OTS objects to the application on the grounds set forth under paragraph (e)(1) of this section.

(f) *Approval of branch notice.* A notice filed by a Federal savings association that qualifies for expedited treatment must be deemed to be approved 30 days after its filing with OTS, unless OTS takes one of the actions described at § 516.200 of this chapter. OTS will apply the review standards set forth in paragraph (e)(1) of this section; or OTS determines to process the filing as an application under § 516.200(b) of this chapter. If the OTS suspends the applicable processing time frames, the savings association may not open a branch until

the OTS provides a notification of its approval.

(g) *Offices not requiring prior written approval.* A Federal savings association may establish without prior approval a drive-in and/or pedestrian office opened in conjunction with an approved branch or home office of the association, located within 500 feet of a public entrance of that office and closer to that entrance than to a public entrance of any other SAIF-insured association, and the functions of which are limited to the ordinary functions performed at a teller-window.

(h) *Maintenance of branch office after conversion, consolidation, purchase of bulk assets, merger or purchase from receiver.* (1) An existing association which converts to a Federal savings association may maintain an existing office, and a Federal savings association that acquires offices through consolidation, purchase of bulk assets, merger or purchase from the receiver of an association may maintain any acquired office, except to the extent the approval by the OTS of the conversion, consolidation, merger, or purchase specifies otherwise.

(2) A Federal savings association may not file a branch application after having filed an application to merge or otherwise surrender its Federal charter, unless the merger or conversion application has been pending for at least six months.

[54 FR 49492, Nov. 30, 1989, as amended at 55 FR 13512, Apr. 11, 1990; 57 FR 14341, Apr. 20, 1992; 57 FR 37084, Aug. 18, 1992; 62 FR 64145, Dec. 4, 1997; 63 FR 65682, Nov. 30, 1998; 66 FR 13006, Mar. 2, 2001; 66 FR 65820, Dec. 21, 2001]

§ 545.93 Branching by Federal savings associations.

(a) *General.* A Federal association may branch in any state or states of the United States and its territories, except as provided in paragraph (b) of this section, subject to the requirements of paragraph (c) of this section.

(b) *Limitations.* No branching will be permitted under paragraph (a) of this section that will result in the following:

(1) Establishment or operation of a branch outside the state in which the